Ustaz Akmal bin Hj Kamaruddin v Dato' Mohamad Daud bin Mohd Yusoff & Anor

HIGH COURT (IPOH) — ELECTION PETITION NO 26PP-6–06 OF 2013
ABDUL RAHMAN SEBLI J
13 AUGUST 2013

Election — Election court — Judge — Powers — Whether election judge may enquire into electoral roll

Election — Petition — Allegation of corrupt and illegal practices — Bribery — Failure to plead material facts relating to allegation of corruption — Failure to particularise persons who committed corrupt practice and persons who received bribery — Election Offences Act 1954 ss 10 & 32(a)

Election — Petition — Amendment — Delay in applying for amendment — Amendment having effect of introducing new charge beyond period permitted to present petition — Respondent deprived of benefit of limitation period — Proposed amendment going to root of petition

Election — Petition — Application for declaration that elections were null and void — Allegation of corrupt practice — Failure to plead material facts relating to allegation of corruption — Failure to particularise persons who committed corrupt practice and persons who received bribery — Election Offences Act 1954 ss 10 & 32(a)

Election — Petition — Service — Personal service — Whether petition should be served personally by petitioner — Whether service of petition by staff of petitioner's solicitor valid — Election Petition Rules 1954 r 15(1)(a)

The petitioner's action was for a declaration that the election for the state constituency of NO5 Selama in the State of Perak Darul Ridzuan held on 5 May 2013 was void and that the first respondent was not duly elected or ought not to have been returned as the winning candidate. The petitioner had also filed an application to amend the petition. The petition was based on two grounds, namely: (a) that there was general bribery under s 32(a) of the Election Offences Act 1954 ('the Act') by the act of the first respondent and the Barisan Nasional or its agents in giving out money under the Bantuan Rakyat

1Malaysia ('BRIM') program and that such general bribery did in fact affect the result of the election; and (b) that there was non-compliance with s 32(b) of the Act read with art 119 of the Federal Constitution in that voters who were not resident in the constituency of NO5 Selama were allowed to vote at the election. The respondents raised the following preliminary objections to the petition: (i) that the petition did not satisfy the mandatory requirements of r 4(1)(b) and r 4(4)(3) of the Election Petition Rules 1954 ('the Rules') read with s 32(a) of the Act as the petitioner failed to state the facts and grounds relied on to sustain the relief sought; (ii) that the petition did not satisfy the mandatory requirements of r 4(1) (b) and r 4(4) (3) of the Rules read together with s 32(b) of the Act as the petition lacked facts and grounds relied on to sustain the prayer; and (iii) that there can be no challenge to the certified or re-certified electoral roll as they are be deemed to be final pursuant to s 9A of the Elections Offences Act 1954. The first respondent also contended that the petition should have been served personally by the petitioner on the first respondent and that no other person had authority to do so on his behalf. In this case the petition was served on the first respondent by a staff of the petitioner's solicitor.

Held, upholding the preliminary objections and striking out the petition with costs:

(1) The court will not readily allow an amendment the necessity for which was abundantly apparent long before the hearing and then not asked for. The present application for amendment if allowed would in effect be to allow the petitioner to introduce a new charge against the first respondent beyond the period he was permitted to present the petition. It would be tantamount to filing afresh an election petition out of time and thus depriving his opponent of the benefit of the period of limitation under s 38 of the Act, thereby causing him an injury which cannot be compensated by costs (see para 6).

(2) One of the petitioner's grounds to avoid the election was an act of corrupt practice by the first respondent which allegedly took place in the constituency of Pasir Panjang. By the proposed amendment the petitioner now wanted the constituency where the alleged corrupt practice took place to be changed from Pasir Panjang to NO5 Selama. The petitioner was attempting to alter the identities of the electors whom he complained had been corruptly induced by the first respondent to vote for him. The proposed amendment therefore went to the root of the petition and not merely a clerical error and should not be allowed (see para 7).

(3) It is a requirement of election law that the grounds for the petition must be made known. All material facts must be pleaded though a concise statement of them will suffice. The facts necessary to support the charge

of general bribery had not been sufficiently pleaded. It did not identify the exact offence and did not particularise the charge. It did not provide sufficient particulars and material facts in support of the allegation that an offence under Part III of the Act had been committed. It did not provide facts and particulars to show that the alleged offence had extensively prevailed. It did not provide facts and particulars to show that the extensive prevalence of the offence, if indeed it had taken place, had more probably than not affected the outcome of the election. The petition also did not state with certainty the person or persons who allegedly committed the corrupt practice and the person or persons who received the bribery and whether the recipient or recipients of the bribe money were on the electoral roll of the NO5 Selama constituency (see paras 9, 12 & 15).

(4) The facts pleaded must be such that if established by viva voce evidence would be sufficient to prove to the satisfaction of the election judge that the offence of corrupt practice had in fact been committed beyond any reasonable doubt. The petition alleged some facts on general bribery but failed to associate those facts with the specific provisions of the law. This failure rendered the petition defective in that there was a missing link between the facts stated and the ground pleaded under s 32(a) of the Act (see paras 17–18).

(5) Even if the petition were to rely on s 10 of the Act on the allegation of general bribery, the petitioner had failed to link the facts to the particular limb of s 10 relied on to support the ground under s 32(a) of the Act (see para 18).

(6) It is outside the powers of an election judge to enquire into the electoral roll. The electoral roll is unchallengable and the issue has been put to rest by the apex court in *Muhammad Sanusi bin Md Nor v Mohd Tajuddin bin Abdullah & dan lain-lain*. An election petition is not concerned with a dispute over the names of registered voters in the certified electoral roll. The court's only concern at this stage of the proceeding is whether the petition meets the threshold requirements of the election laws and rules (see para 20).

(7) What is required by r 15(1)(a) of the Rules is for service to be effected on the person of the respondent and not for service to be effected in person by the petitioner. The word 'personally' in the provision refers to the respondent and not the petitioner (see para 23).

[Bahasa Malaysia summary

Tindakan pempetisyen adalah untuk deklarasi bahawa pilihan raya bagi bahagian pilihan raya negeri NO5 Selama di Negeri Perak Darul Ridzuan yang diadakan pada 5 Mei 2013 adalah tidak sah dan bahawa responden pertama tidak dipilih dengan sewajarnya atau tidak patut dikembalikan sebagai calon

yang menang. Pempetisyen juga telah memfailkan permohonan untuk meminda petisyen itu. Petisyen itu adalah berdasarkan kepada dua alasan, iaitu: (a) bahawa terdapat sogokan secara am di bawah s 32(a) Akta Kesalahan Pilihan Raya 1954 ('Akta') oleh perbuatan responden pertama dan Barisan Nasional atau ejen-ejennya yang memberi wang di bawah program Bantuan Rakyat 1Malaysia ('BR1M') dan bahawa sogokan secara am seperti itu sebenarnya memberi kesan kepada keputusan pilihan raya itu; dan (b) bahawa terdapat ketidakpatuhan dengan s 32(b) Akta dibaca dengan perkara 119 Perlembagaan Persekutuan bahawa pengundi yang tidak bermastautin di kawasan Parlimen NO5 Selama dibenarkan untuk mengundi dalam pilihan raya itu. Responden menimbulkan bantahan awal berikut terhadap petisyen itu: (i) bahawa petisyen itu tidak memenuhi keperluan mandatori k 4(1)(b) dan k 4(4)(3) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('Kaedah-Kaedah') dibaca dengan s 32(a) Akta kerana pempetisyen gagal menyatakan fakta dan alasan yang berasaskannya untuk mengekalkan relief yang dipohon; (ii) bahawa petisyen itu tidak memenuhi keperluan mandatori k 4(1)(b) dan k 4(4)(3) Kaedah-Kaedah dibaca bersama dengan s 32(b) Akta kerana petisyen itu kekurangan fakta dan alasan yang berasaskannya untuk mengekalkan permohonan itu; dan (iii) tiada sebarang cabaran kepada daftar pemilih yang diperakui atau diperakui semula kerana mereka disifatkan sebagai muktamad menurut s 9A Akta Pilihan Raya 1954. Responden pertama juga menegaskan bahawa petisyen itu sepatutnya telah disampaikan sendiri oleh pempetisyen kepada responden pertama dan bahawa tiada orang lain mempunyai kuasa untuk berbuat demikian bagi pihaknya. Dalam kes ini petisyen itu telah disampaikan kepada responden pertama oleh kakitangan peguam pempetisyen.

Diputuskan, mengekalkan bantahan-bantahan awal dan membatalkan petisyen dengan kos:

(1) Mahkamah tidak dengan mudah membenarkan suatu pindaan yang mana keperluan untuknya jelas lama sebelum perbicaraan itu dan kemudian tidak dipohon. Permohonan untuk pindaan ini jika dibenarkan akan memberi kesan yang membolehkan pempetisyen memperkenalkan pertuduhan baru terhadap responden pertama di luar tempoh dia dibenarkan untuk mengemukakan petisyen itu. Ia akan sama seperti memfailkan semula sesuatu petisyen pilihan raya di luar masa dan dengan itu menafikan lawannya daripada memperoleh manfaat tempoh had masa di bawah s 38 Akta, dan dengan itu menyebabkan mengalami kerugian yang tidak boleh dipampas dengan kos (lihat perenggan 6).

(2) Salah satu alasan pempetisyen untuk mengelakkan pilihan raya adalah satu tindakan rasuah oleh responden pertama yang didakwa berlaku di kawasan Parlimen Pasir Panjang. Dengan pindaan yang dicadangkan pempetisyen kini mahu pilihan raya itu di mana amalan rasuah yang didakwa berlaku ditukar dari Pasir Panjang ke NO5 Selama. Pempetisyen

telah cuba untuk mengubah identiti pengundi yang dia mengadu telah disogok dengan rasuah oleh responden pertama untuk mengundinya. Pindaan yang dicadangkan oleh itu merupakan asas petisyen itu dan bukan kesilapan kerani semata-mata dan tidak patut dibenarkan (lihat perenggan 7).

(3) Ia adalah keperluan undang-undang pilihan raya bahawa alasan untuk petisyen itu hendaklah diketahui umum. Semua fakta penting hendaklah dipli namun begitu kenyataan ringkas tentangnya adalah mencukupi. Fakta yang perlu untuk menyokong pertuduhan untuk sogokan secara am tidak dipli secukupnya. Ia tidak mengenal pasti kesalahan sebenar dan tidak memperincikan pertuduhan. Ia tidak memberikan butir-butir yang mencukupi dan fakta penting bagi menyokong dakwaan bahawa suatu kesalahan di bawah Bahagian III Akta yang telah dilakukan. Ia tidak memberikan fakta dan butir-butir yang menunjukkan bahawa kesalahan yang dikatakan telah kerap berlaku. Ia tidak memberikan fakta dan butir-butir yang menunjukkan bahawa kekerapan kesalahan itu, jika memang ia telah berlaku, mempunyai lebih mungkin daripada tidak memberi kesan kepada keputusan pilihan raya. Petisyen itu juga tidak menyatakan dengan pasti orang atau orang-orang yang didakwa melakukan amalan rasuah dan orang atau orang-orang yang menerima rasuah dan sama ada penerima atau penerima wang rasuah itu berada di dalam daftar pemilih bahagian pilihan raya NO5 Selama (lihat perenggan 9, 12 & 15).

(4) Fakta yang dipli perlu sedemikian jika dibuktikan oleh keterangan viva voce mencukupi untuk membuktikan dengan kepuasan hati hakim pilihan raya bahawa kesalahan rasuah sebenarnya telah dilakukan di luar keraguan yang munasabah. Petisyen itu didakwa beberapa fakta mengenai sogokan secara am tetapi gagal untuk mengaitkan fakta dengan peruntukan-peruntukan tertentu undang-undang. Kegagalan ini menyebabkan petisyen itu cacat yang mana terdapat satu pautan yang hilang antara fakta yang dinyatakan dan alasan yang dipli di bawah s 32(a) Akta (lihat perenggan 17–18).

(5) Walaupun petisyen itu bergantung kepada s 10 Akta atas dakwaan sogokan secara am, pempetisyen telah gagal untuk mengaitkan fakta-fakta dengan cabang tertentu s 10 yang digunapakai untuk menyokong alasan di bawah s 32(a) Akta (lihat perenggan 18).

(6) Ia adalah di luar kuasa seseorang hakim pilihan raya untuk menyiasat daftar pemilih. Daftar pengundi adalah tidak boleh dicabar dan isu itu telah diputuskanoleh mahkamah tertinggi dalam kes *Muhammad Sanusi bin Md Nor v Mohd Tajuddin bin Abdullah & dan lain-lain*. Sesuatu petisyen pilihan raya tidak mementingkan pertikaian ke atas nama-nama yang didaftarkan di pengundi dalam daftar pemilih yang diperakui. Mahkamah hanya prihatin pada peringkat prosiding ini sama ada

petisyen itu memenuhi syarat-syarat ambang undang-undang pilihan raya dan peraturan (lihat perenggan 20).

(7) Apa yang diperlukan oleh k 15 (1) (a) Kaedah-Kaedah ini adalah agar penyampaian dilaksanakan ke atas responden dan bukan penyampaian dilaksanakan sendiri oleh pempetisyen. Perkataan 'secara peribadi' dalam peruntukan ini merujuk kepada responden dan bukan pempetisyen (lihat perenggan 23).]

Notes

For cases on allegation of corrupt and illegal practices, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2125–2129.

For cases on amendment, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2149–2153.

For cases application for declaration that elections were null and void, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2159–2168.

For cases on judge, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2096–2097.

For cases on service, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2222–2235.

Cases referred to

Abdul Karim bin Abdul Rasid v Dato' Siti Salmah binti Mat Sujak & 2 Ors (Ipoh Election Petition No 26PP-02–06/2013) (refd)

Abu Bakar v Mohamed Zain [1967] 1 MLJ 168 (refd)

Ahmad Ramzi bin Mohamad Zubir v Hj Abdul Hadi bin Awang [2009] 4 MLJ 867; [2009] 7 CLJ 205, HC (refd)

Ananga Uday Singh Deo v Ranga Nath Mishra & Ors JT 2001 (8) SC 574, SC (refd)

Devan Nair v Yong Kuan Teik [1967] 1 MLJ 261, PC (refd)

Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N26 Bangi Mohd Zakri bin Hj Hussin & Ors and other petitioners (No 2) [2005] 2 MLJ 149, HC (refd)

Gajanan Krishnaji Bapat v Dattaji Raghobaji Meghe [1995] 5 SCC 347; AIR 1995 SC 2284, SC (refd)

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)

Hadrwah Lai v Kerwal Singh AIR 1972 SC 515 (refd)

Harish Chandra Bajpai v Triloki Singh AIR 1957 SC 444, SC (refd)

Hipgrave v Case (1885) 28 Ch D 356, Ch D (refd)

Maude v Lowely (1873–74) LR 9 CP 165 (refd)

Mohd Nazri bin Hj Din v Dato' Seri Ahmad Zainudin bin Raja Hj Omar & Ors [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (refd)

Muhammad Sanusi bin Md Nor v Mohd Tajuddin bin Abdullah & dan lain-lain [2009] 8 MLJ 131; [2009] 1 CLJ 1, HC (refd)

Norbert Choong Kai Chong v Mohamed Idris bin Haji Ibrahim & Anor [1980] 1 MLJ 316 (refd)
Pengkalan Kota Bye-Election Teoh Teik Huat, Re v Lim Kean Siew & Anor [1981] 1 MLJ 265; [1981] 1 LNS 1 (refd)
Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor [2009] 3 MLJ 1, FC (refd)
Tengku Korish v Mohamed bin Jusoh Abdul Raout v Ibrahim bin Arshad & Anor Mokhtar bin Abdullah v Mokhtar bin Haji Daudz & Anor [1970] 1 MLJ 6; [1969] 1 LNS 189 (refd)
Tg Nawawi Tengku Abd Kadir v Lokman Muda & lagi [1996] 1 CLJ 551, HC (refd)
Wan Daud bin Wan Jusoh v Mohd bin Haji Ali & Anor Daud bin Jusoh v Anwar bin Haji Musa & Anor Mohd Nor bin Ismail v Mohd Zain bin Abdullah & Anor [1988] 2 MLJ 384 (refd)
Wan Sagar bin Wan Embong v Harun bin Taib & Ors [2008] 4 MLJ 473; [2009] 1 CLJ 457, FC (refd)
Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor [1979] 2 MLJ 143 (refd)

Legislation referred to

Election Offences Act 1954 ss 9A, 10, 32(a), 32(b), (c), 38, 38(2), Part III
Election Petition Rules 1954 rr 4(1)(b), (4)(3), 9, 15(1)(a), 34
Federal Constitution art 119

Petitioner unpresented.
Firoz Hussein bin Ahmad Jamaluddin (Abu Bakar As-Sidek bin Mohd Sidek, Badrul Hisham bin Abdul Wahap and Mohd Hasnal bin Abdul Aziz with him) (Ong Hanim & Badrul) for the first respondent.
Norinna bt Bahadun (Senior Federal Counsel, Attorney General's Chambers) (Hanim bt Abd Rahman, Hani Aziza bt Ismail, Senior Federal Counsel and Mardhiah bt Ahmad, Federal Counsel with her) for the second respondent.

Abdul Rahman Sebli J:

[1] The petitioner's action is for a declaration that the election for the State Constituency of NO5 Selama in the State of Perak Darul Ridzuan held on 5 May 2013 is void and that the first respondent was not duly elected or ought not to have been returned as the winning candidate. The petition is opposed by the respondents by way of preliminary objections. The petitioner has also filed an application to amend the petition, which the respondents also object to.

[2] I had on the morning of 12 August 2013 after hearing arguments, including from a representative of the Bar Council who asked to be allowed to address the court as *amicus curiae* excused Dato' Bastian Vendargon, Mr Ramachandran a/l Nana Pulle and Mr Eugene Vendargon from further acting

as counsel for the petitioner in these proceedings on the ground of non compliance with rr 9 and 34 of the Election Petition Rules 1954 ('the Rules'). It is to be noted that Dato' Bastian Vendargon and Mr Eugene Vendargon are not even included in the list of advocates filed by the petitioner pursuant to r 9 of the Rules. This left the petitioner with no legal representation. When hearing resumed in the afternoon of the same day one Mohammad Nizar bin Jamaluddin who claimed to be the deputy commissioner of PAS Perak informed the court that the petitioner was not available as he was away in Terengganu for the Hari Raya celebrations and pleaded for the case to be adjourned to the following day or the day after. According to him the petitioner wishes to act for himself in these proceedings. I disallowed the request for adjournment as I saw no purpose in doing so. It is clear that the petitioner has no right in the first place to represent himself as he did not file any notice to act for himself pursuant to r 9 of the Rules, which provides as follows:

> 9 With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing signed by him or them, giving the name of an advocate whom he or they authorise to act as his or their advocate *or stating that he or they act for himself or themselves, as the case may be*, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.
>
> (Emphasis added.)

[3] The notice that the petitioner filed pursuant to r 9 of the Rules was for the appointment of 22 advocates to represent him, among whom is 'Gopal Sri Ram' (number 11 in the list), a distinguished former Federal Court judge whose learned judgments have inspired many.

[4] It is the respondents' contention that the petition ought to be struck out in limine without going through a full trial as it was filed by a firm of advocates and solicitors, namely Messrs N P Ramachandran & Associates and not by an advocate as required by the Rules. Among the various authorities cited in support of the argument is my decision in *Abdul Karim bin Abdul Rasid v Dato' Siti Salmah binti Mat Sujak & 2 Ors* (Ipoh Election Petition No 26PP-02–06/2013) delivered on 30 July 2013. Since the factual matrix of the present case is identical with that of *Abdul Karim bin Abdul Rasid* I see no reason to depart from my decision in that case.

[5] Be that as it may, having regard to the unfortunate circumstances that the petitioner has found himself in arising from the disqualification of his three counsel and his lack of standing to represent himself, I shall deal with the merits of the preliminary objections raised by the respondents together with the petitioner's application for amendment notwithstanding his absence and lack of legal representation and notwithstanding counsel for the respondents' contention that in the absence of the petitioner the court is at liberty to dismiss

outright the application for amendment and the petition. Yesterday afternoon (12 August 2013), just before the matter was adjourned for decision today, Mr Andrew Khoo Chin Hock for the Bar Council suggested that to deprive the petitioner of the right to counsel and the right to be heard would be contrary to natural justice. For the record although the petitioner had no opportunity to address the court orally on the preliminary objections and his amendment applications due to the reasons aforesaid, I have given careful consideration to his written submissions filed through his previous solicitors before Dato' Bastian Vendargon and Mr Eugene Vendargon came into the picture. I shall deal with the amendment application first.

PETITIONER'S APPLICATION FOR AMENDMENT

[6] The rule is that the court will not readily allow an amendment the necessity for which was abundantly apparent long before the hearing and then not asked for: see *Hipgrave v Case* (1885) 28 Ch D 356. In *Tengku Korish v Mohamed bin Jusoh & Anor* [1970] 1 MLJ 6; [1969] 1 LNS 189 the petitions were dismissed for failure to file them within time. In *Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor* [1979] 2 MLJ 143 Mohamad Zahir J held that by virtue of s 38(2) of the Election Offences Act 1954 ('the Election Offences Act'), an amendment affecting corrupt or illegal practice is to be made within the time the petition may be presented. The present application for amendment if allowed would in effect be to allow the petitioner to introduce a new charge against the first respondent beyond the period he is permitted to present the petition. It would be tantamount to filing afresh an election petition out of time and thus depriving his opponent of the benefit of the period of limitation under s 38 of the Election Offences Act, thereby causing him an injury which cannot be compensated by costs: see *Abu Bakar v Mohamed Zain* [1967] 1 MLJ 168 per Yong J. In *Maude v Lowely* (1873–74) LR 9 CP 165 Coleridge CJ made the following pertinent observations:

> The respondent has a right to know once and for all within the twenty-one days what are the precise charges which he has to meet, and may then destroy any documents and vouchers he may possess that might have reference to any other charges. Mr. Tennant has also pointed out that, after the expiration of the twenty-one days, it would be too late for anyone else to present a fresh petition; and that to allow a petitioner to amend so as substantially to make the amended petition a fresh one, would be conferring upon him a privilege which no other person could possess.

[7] One of the petitioner's grounds to avoid the election is an act of corrupt practice by the first respondent which allegedly took place in the constituency of Pasir Panjang. By the proposed amendment the petitioner now wants the constituency where the alleged corrupt practice took place to be changed from

Pasir Panjang to NO5 Selama. What is sought in the amendment is to literally move the crime scene from Pasir Panjang to NO5 Selama. Pasir Panjang and Selama are two distinct state constituencies from two distinct and separate parliamentary seats, namely P074 Lumut being the parliamentary constituency for Pasir Panjang while Selama is situated in the parliamentary constituency of P056 Larut. There is therefore substance in learned counsel for first respondent's argument that by the proposed amendment the petitioner is in fact attempting to alter the identities of the electors whom he complains had been corruptly induced by the first respondent to vote for him. The proposed amendment therefore goes to the root of the petition and not merely a clerical error and should not be allowed. The application for amendment is accordingly dismissed with costs.

THE FIRST AND THE SECOND RESPONDENTS' PRELIMINARY OBJECTIONS.

[8] It may appear paradoxical that despite having objected to the petitioner's application to amend the petition by replacing the word 'Pasir Panjang' with the word 'NO5 Selama' which I have just upheld, the respondents continued to make references to NO5 Selama in their submissions in support of their preliminary objections to the petition. This perhaps is understandable as other parts of the petition retain NO5 Selama as the constituency where the alleged general bribery and corrupt practice were alleged to have taken place. In other words the amendment application was confined to certain paragraphs of the petition and is not an application to amend the petition across the board. The main body of the petition still retains NO5 Selama as the subject matter of the action. Indeed the petition is based on alleged irregularities in the NO5 Selama election. The first and second respondents' objections to the petition are anchored on the following grounds:

(a) the petition does not satisfy the mandatory requirements of rr 4(1)(b) and 4(4)(3) of the Election Petition Rules 1954 ('the Rules') read with s 32(a) of the Election Offences Act as the petitioner fails to state the facts and grounds relied on to sustain the relief sought;

(b) the petition does not satisfy the mandatory requirements of rr 4(1)(b) and 4(4)(3) of the Rules read together with s 32(b) of the Election Offences Act as the petition lacks facts and grounds relied on to sustain the prayer; and

(c) there can be no challenge to the certified or re-certified electoral roll as they are be deemed to be final pursuant to s 9A of the Elections Offences Act 1954.

A THE LAW

[9] An objection to an election petition is an issue of law: see *Norbert Choong Kai Chong v Mohamed Idris bin Haji Ibrahim & Anor* [1980] 1 MLJ 316. The B election courts have time and again held that the statutory requirements of election laws are mandatory and must be strictly observed: see for instance Tengku Korish v Mohamed bin Jusoh Abdul Raout v Ibrahim bin Arshad & Anor Mokhtar bin Abdullah v Mokhtar bin Haji Daudz & Anor. It is also a requirement of election law that the grounds for the petition must be made C known: see *Wan Daud bin Wan Jusoh v Mohd bin Haji Ali & Anor Daud bin Jusoh v Anwar bin Haji Musa & Anor Mohd Nor bin Ismail v Mohd Zain bin Abdullah & Anor* [1988] 2 MLJ 384. All material facts must be pleaded though a concise statement of them will suffice: *Mohd Nazri bin Hj Din v Dato' Seri Ahmad Zainudin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ D 221. It is not permissible for the court to travel outside the parameters of the petition in order to decide whether the petitioner has a cause of action: *Ahmad Ramzi bin Mohamad Zubir v Hj Abdul Hadi bin Awang* [2009] 4 MLJ 867; [2009] 7 CLJ 205. In *Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor* [2009] 3 MLJ 1 the Federal Court held, inter alia, that non-compliance with E the rules or the elections laws must necessarily result in a jurisdictional defect and the court has no power to entertain the petition.

[10] The special jurisdiction conferred on the election court requires the F court to observe the mandatory requirements and strict limitations imposed by the election laws which may be contrary to the normal civil jurisdiction, common law or equity. In exercising this jurisdiction the court has inherent power to cleanse its list by striking out or dismissing petitions which are defective or nullities: see *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261, a G decision of the Privy Council. In that case the election petition was struck out purely on the procedural ground that there was non compliance with r 15 of the Rules, which rendered the petition a nullity.

[11] The present petition is based on two grounds, namely:

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(a) There was general bribery under s 32(a) of the Election Offences Act by the act of the first respondent and the Barisan Nasional or its agents in giving out money under the Bantuan Rakyat 1 Malaysia ('BRIM') program and that such general bribery did in fact affect the result of the I election; and

(b) There was non compliance with s 32(b) of the Election Offences Act read with art 119 of the Federal Constitution in that voters who were not resident in the constituency of NO5 Selama were allowed to vote at the election.

GENERAL BRIBERY

[12] At first glance the particulars of the alleged bribery as set out in para 7 of the petition appear to sufficiently state the facts and grounds relied on to sustain the prayer in compliance with r 4(1) (b) of the Rules but on close scrutiny it is clear that the petitioner is beating around the bush. Even the facts necessary to support the charge of general bribery have not been sufficiently pleaded. It does not identify the exact offence and does not particularise the charge. It does not provide sufficient particulars and material facts in support of the allegation that an offence under Part III of the Election Offences Act had been committed. It does not provide facts and particulars to show that the alleged offence had extensively prevailed. Neither does it provide facts and particulars to show that the extensive prevalence of the offence, if indeed it had taken place, had more probably than not affected the outcome of the election.

[13] This is not to say of course that the petitioner must plead or disclose his entire evidence. All that is required of him is to state material facts and particulars of the alleged corrupt practice with exactitude and precision. The particulars of general bribery as set out in para 7 of the petition are not in my view sufficient compliance with the necessity to plead material facts. Paragraph 7(a) even include Pasir Panjang as the place where the alleged bribery occurred but fails to state the co-relation between Pasir Panjang and the constituency of NO5 Selama which is the subject matter of the present petition.

[14] It is trite law that an election petition without the material facts relating to corrupt practice is no election petition at all: *Hadrwah Lai v Kerwal Singh* AIR 1972 SC 515. In *Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N26 Bangi Mohd Zakri bin Hj Hussin & Ors and other petitioners (No 2)* [2005] 2 MLJ 149 it was held, inter alia, as follows:

> It is imperative for the petitioner to identify the precise class of the offence, namely, whether it is general bribery, general treating or general intimidation. Part III of the Election Offences Act 1954 which deals with corrupt practices provides specific definition of these offences. The petitioner must identify in clear and specific terms the relevant charge/charges against the third respondent. The facts which constitutes a corrupt practice must be stated and the facts must be correlated to one of the heads of corrupt practice. It is not sufficient for the petitioner to merely state/allege the general class of the offence without sufficiently particularising the charge. The gravamen of the charge must be set out with exactitude and precision.

[15] The petition also does not state with certainty the person or persons who allegedly committed the corrupt practice and the person or persons who received the bribery and whether the recipient or recipients of the bribe money were on the electoral roll of the NO5 Selama constituency. This is not unlike the scenario in *Re Pengkalan Kota Bye-Election Teoh Teik Huat v Lim Kean Siew*

& Anor [1981] 1 MLJ 265; [1981] 1 LNS 1 which prompted Eusoffee Abdoolcader J (as he then was) to make the following snide remarks:

> There is no such specific or identifiable particularity in this case but only an allegation of an address to a faceless and amorphous crowd of somewhat uncanalised fluidity of over 1,500 people said to have been largely comprised of electors or voters and people of the constituency.

[16] In the Indian cases of *Ananga Uday Singh Deo v Ranga Nath Mishra & Ors JT* 2001 (8) SC 574 and *Gajanan Krishnaji Bapat v Dattaji Raghobaji Meghe* [1995] 5 SCC 347; AIR 1995 SC 2284 it was held that the petition must contain a concise statement of the material facts and set forth full particulars of any corrupt practice that the petitioner alleges, including the names of the parties alleged to have committed such practice, and the date and place of the commission of such corrupt practice. In *Chawla's Election Law & Practice* (2004th Ed) by PC Jain and Dr Kiran Jain the learned authors at p 1412 expressed the view that failure to plead even a single material fact leads to an incomplete cause of action; and incomplete allegations are liable to be struck out. In another Indian case, *Harish Chandra Bajpai v Triloki Singh* AIR 1957 SC 444 at p 456 the Supreme Court observed:

> It should not be forgotten that charges of corrupt practice are quasi-criminal in character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates.

[17] The petitioner in his written submissions filed through his former solicitors submitted that the court must draw a distinction between a challenge made under s 32(a) and a challenge made under s 32(c) of the Election Offences Act. It was argued that only where the challenge is made under s 32(c) that specific instances of corrupt practice must be stated but not where the challenge is made under s 32(a). With due respect I see nothing in the point taken. In an election petition any allegation of bribery general or specific must be stated with clarity and certainty. The facts pleaded must be such that if established by viva voce evidence would be sufficient to prove to the satisfaction of the election judge that the offence of corrupt practice had in fact been committed beyond any reasonable doubt. The standard of proof is the same standard of proof that is required to establish the guilt of a man accused of committing a crime. It is not enough to merely establish by the civil standard of proof that it is more probable than not that corrupt practice had taken place, least of all to merely cast a suspicion no matter how grave that general bribery had occurred. Suspicion, speculation, perception and the like have no place in a court of law.

[18] The petition alleges some facts on general bribery but fails to associate those facts with the specific provisions of the law. This failure renders the

petition defective in that there is a missing link between the facts stated and the ground pleaded under s 32(a) of the Election Offences Act. In *Jusoh v Mohamed bin Hj Ali & Anor* [1988] 2 MLJ 384 it was held as follows:

> A petition under rule 4 therefore must not only narrate the facts complained of but must relate or associate the complaints with the provision of the election laws the respondent is alleged to have transgressed…
>
> The respondents are not expected to make a guess of what provisions they have transgressed and on the basis of that to prepare a conjectural defence. It is the mandatory obligation of the petitioner to associate these facts with the offending regulation.

[19] This principle was endorsed by the Federal Court in *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729: see also *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473; [2009] 1 CLJ 457 (FC) which reaffirmed *Gan Joon Zin*. Even if the petition were to rely on s 10 of the Election Offences Act on the allegation of general bribery, the petitioner has also failed to link the facts to the particular limb of s 10 relied on to support the ground under s 32(a) of the same Act. In this respect the petition suffers from the following infirmities:

(a) It fails to state the element of 'bargaining' that had allegedly taken place. There is nothing in the petition to state that there was a counter-promise by voters in the NO5 Selama constituency that they would vote for the first respondent in return for the BRIM money that had been paid out or promised them by the first respondent and the Barisan Nasional or its agents. In para 7(h) of the petition, the petitioner merely pleads '*bahawa terdapat unsur tawaran atau rundingan di bawah program BRIM di Selama*'. This falls short of saying that there was as a matter of fact a bargain struck between the first respondent and the voters. In *Mohd Nazri bin Hj Din*'s case the Federal Court quoted with approval the following comments by the learned authors of *Election Laws, Practice and Procedure* by Rama Devi and Mendiratta at p 790:

> But it should be clearly borne in mind that it is not every gift, offer or promise of gratification to voters which may attract the provisions of s 123(1). In such gift, offer or promise, there should be an element of bargaining for votes. In other words, any such gift, offer or promise of gratification should be made asking for the votes in return. The Supreme Court held in *Ghasi Ram v Dal Singh* AIR [1968] SC 1191 that an offer or promise not made to any particular voter or voters but to the general body or residents, without distinguishing between those who were favourably inclined and those who were not, was not corrupt practice. The gist of the corrupt practice lay in attempting to do something for those who were opposed to the candidate with a view to changing their votes and as a bargain for votes.

A It follows that the making of the gift, loan, offer etc must be for the purpose of changing the mind of the voters who have been identified. This is logical as the question of inducing a person to do something simply cannot arise if he has already decided to do the very thing.

B (b) the petition fails to state that the alleged corrupt act was targeted at a particular or specific group of voters in the NO5 Selama constituency;

(c) it fails to state any fact to show that the voters in the NO5 Selama constituency had in fact been induced to vote for the first respondent by the money they received under the BRIM program;

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(d) the facts pleaded in the petition are insufficient to make a case that the alleged act of general bribery was so prevailing during the nationwide election, including in the NO5 Selama constituency;

(e) it is no excuse for the petitioner's failure to specify names to say in para 7(g) of the petition that '*Orang-orang yang dijadikan sasaran penyogokan am tersebut di atas adalah terlalu ramai maka adalah tidak praktikal untuk mengemukakan butir-butir nama mereka semua*'. The accusation is made, so it behoves the accuser to specify the particulars of those who became the target of the bribery; and

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(f) nowhere is it stated in the petition that because of the money given under the BRIM program, voters who initially wished to vote for the petitioner changed their minds and voted for the first respondent instead. The petitioner also fails to identify those voters who were favourably inclined towards him and those who were not. The petition is conspicuously vague in this respect

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ARTICLE 119 OF THE FEDERAL CONSTITUTION

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[20] By para 9 of the petition the petitioner is challenging the validity of the electoral roll by questioning the status of the registered voters in the NO5 Selama constituency. The allegation is that voters who were not resident in the constituency of NO5 Selama were allowed to vote at the election and this was contrary to art 119 of the Federal Constitution. In this regard I agree with the learned senior federal counsel that it is outside the powers of an election judge to enquire into the electoral roll. The electoral roll is unchallengable and the issue has been put to rest by the apex court in *Muhammad Sanusi bin Md Nor v Mohd Tajuddin bin Abdullah & dan lain-lain* [2009] 8 MLJ 131; [2009] 1 CLJ 1. In any event an election petition is not concerned with a dispute over the names of registered voters in the certified electoral roll: see *Tg Nawawi Tengku Abd Kadir v Lokman Muda & lagi* [1996] 1 CLJ 551. Further, the court's only concern at this stage of the proceeding is whether the petition meets the threshold requirements of the election laws and rules.

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[21] The petitioner however contended that his challenge is not on the electoral roll but rather on the observance of the electoral roll. With due respect I do not see any difference between challenging the electoral roll and challenging its observance. It is two sides of the same coin. In any case the petition fails to set out the following:

(a) the written law relating to the conduct of elections that the second respondent allegedly transgressed. The alleged non-compliance with any written law must be specified clearly in the petition as failure to do so will render the petition defective and invalid: *Tan Sri Joseph Kurup*;

(b) the identity of the returning officer who allegedly allowed the voters to vote without ascertaining their eligibility;

(c) the identities of voters whom the returning officer allegedly allowed to vote without ascertaining their eligibility;

(d) the exact place, time and date of the incident;

(e) the names of the 'deceased' who were allegedly allowed to vote;

(f) the identities of the 1000 persons alleged to have voted but who did not have any address in the NO5 Selama constituency; and

(g) the identities of the persons who allegedly had false addresses.

CONCLUSION

[22] Having regard to the defects in the petition as adumbrated above I am inclined to agree with the first and second respondents that there had been fatal non compliance with the election laws in the drafting of the petition and that the petition ought to be struck out in limine. This disposes of the preliminary objections raised by the first and the second respondents but for completeness I shall deal briefly with the point raised by learned counsel for the first respondent that the petition should have been served personally by the petitioner on the first respondent and that no other person had authority to do so on his behalf. In this case the petition was served on the first respondent by a staff of the petitioner's solicitor.

[23] I am unable to accede to counsel's argument if the point intended to be driven home is that the petitioner must himself physically serve the petition on the respondent. It is clear to me that what is required by r 15(1)(a) of the Rules is for service to be effected on the person of the respondent and not for service to be effected in person by the petitioner. The word 'personally' in the provision refers to the respondent and not the petitioner. To give r 15(1)(a) the meaning ascribed to it by learned counsel for the first respondent, if I understood him

correctly that is, would lead to an absurdity whereby a blind man unaided will never be able to serve his petition on the respondent. I therefore agree with the petitioner that an advocate duly appointed by the petitioner can effect service on his behalf provided service is effected on the respondent personally and provided further that rr 9 and 34 of the Rules are complied with.

ORDER

[24] For reasons aforesaid I am constrained to uphold the preliminary objections raised by the first and the second respondents. The petition is struck out with costs.

Preliminary objections upheld and petition struck out with costs.

Reported by Kanesh Sundrum